



Comptroller General
of the United States

Washington, D.C. 20548

McAuliffe

Decision

Matter of: Astron
File: B-236922.2
Date: May 2, 1990

Joseph R. Jahoda, for the protester.
William D. Bachler, for Eyring, Inc., an interested party.
Judy Sukol, Esq., and Major James Miller, Esq., Department of the Army, for the agency.
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) (1988) is not objectionable where the agency reasonably determined that only one source could supply the desired non-developmental item within the time constraints of the procurement, and the protester's offered product reasonably was not found compliant with the agency's requirements.

DECISION

Astron protests the Department of the Army's proposed sole-source award to Eyring, Inc., under request for proposals (RFP) No. DAAB07-89-R-A086, for lightweight, quickly deployable, low profile antennas with delivery of 1,005 antennas during a 7-month period after award. Astron contends that the contracting agency failed to properly evaluate Astron as an alternate source for the antennas and improperly determined Eyring to be the only responsible source capable of meeting the agency's needs.

We deny the protest.

The Army had been interested in a low profile antenna for a number of years and had monitored technical developments concerning the product. In response to an unsolicited

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proposal submitted by Eyring in September 1988 for a low profile antenna, the agency conducted a market survey of 10 known antenna producers, including Astron, to determine if other sources were also available. The Army's specific requirements were discussed with each firm. Although a few firms expressed an interest in possibly developing a similar product in the future, not one of the firms contacted stated that it presently had a product meeting the Army's requirements. An Astron senior official affirmed at that time that the protester did not have a conforming low profile antenna but asserted that if one of its mast-mounted antennas was shortened and laid on the ground, it "should" operate within the Army's specifications.

Based upon the results of its market survey, and satisfactory testing of Eyring's product, the Army determined to follow the procedures required by 10 U.S.C. § 2305(f) (1988) for using other than competitive procedures. The Army executed a justification and approval (J&A), approved by the appropriate authority, for the one-time procurement of the item (i.e., without provisions for options or follow-on contracts) on a sole-source basis. The J&A cited the authority of 10 U.S.C. § 2304(c)(1), which permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available, and no other type of property or services will satisfy the agency's needs.

On August 11, 1989, the Army published in the Commerce Business Daily (CBD) a notice of its intention to procure 1,005 of the Eyring low profile antennas from that firm through the use of other than full and open competition procedures under Federal Acquisition Regulation (FAR) § 6.302-1 (FAC 84-38). The CBD synopsis also noted that although the Army anticipated negotiating a sole-source award to Eyring, the only known available source of the needed product, all other expressions of interest in the requirement or proposals received within 45 days of the publication of the synopsis would be considered. The Army received statements of interest from two firms, one of which admittedly did not presently have a complying product, and Astron, which sent a letter to the contracting officer setting forth the firm's capabilities and furnishing descriptive literature on Astron's products.

The RFP was issued for non-developmental item (NDI) low profile antennas and mailed to Astron, Eyring, and other interested vendors on August 28. The agency explains that the solicitation's NDI requirement sought to provide the Army with a complete off-the-shelf antenna system which could be delivered for direct distribution and use in field

operations by various Army installations within a relatively short (i.e., 7-month) delivery schedule. The Army explains that the RFP's requirements stem from the current critical operational need of its special forces and other covert operations for antennas that can be "concealed from enemy observers yet maintain the ability to receive radio communications in a variety of weather conditions and terrain." The Army states that the antennas currently being deployed are unsatisfactory and risk the safety and effectiveness of military personnel in forward area field operations because they must be mounted on masts protruding upwards from the ground, thus creating a "visual signature" for competing forces.

On August 30, Astron sent a letter of protest to the contracting officer challenging the proposed sole-source procurement and claiming that Astron allegedly also manufactured a complying antenna. Along with its protest letter, and then again in early September, Astron sent the agency information about several of its antennas. By letter of September 14, after technical review of Astron's descriptive literature, the contracting officer notified Astron that since the firm had not presented information about the specific high frequency low profile antenna it proposed to meet the Army's requirements, Astron could not be considered an alternate source; he therefore denied Astron's August 30 protest. In this same letter, Astron was given a list of the NDI antenna requirements and was urged to immediately submit more information, including test data or user reports to confirm operational ability and performance reliability, if it in fact had an antenna meeting the stated requirements. On September 18, Astron was also requested to submit a technical proposal in response to the RFP, which would be evaluated for technical acceptability.

In late September, Astron submitted test data and other technical literature to the agency describing its Astron Model FD-230A antenna, which operates above-ground and is mounted on a mast. Astron's technical proposal for a newly developed low profile antenna (i.e., an antenna which is to be laid on the ground without the use of a mast) was submitted on September 27 for consideration by the Army. Astron's technical proposal, however, was primarily based upon operational information concerning the performance capabilities of its mast-mounted antenna. The technical evaluation panel reported that the protester's proposal could not be found technically acceptable because it lacked adequate technical information to show compliance with the agency's needs, namely, data demonstrating performance

reliability of its antenna deployed on the ground, as well as needed information about pattern and power gain.

On October 19, Astron submitted, along with another letter of protest, additional information. On November 1, Astron submitted to the agency its newly developed prototype low profile antenna (FD-230E) which had much smaller size, less weight, and decreased power than the FD-230A antenna. The Army conducted technical reviews of Astron's proposal as well as additional literature, and performed limited testing of Astron's prototype in December, January, and February. Astron was informed on February 2, 1990, however, that its most recent protest against the proposed sole-source procurement was denied and that its proposal was rejected for failing to adequately substantiate that the offered FD-230E antenna was a proven off-the-shelf NDI antenna with documented reliable performance in a tactical military environment. Astron was again notified that its test data and user reports on the FD-230A mast-mounted antenna were not acceptable to support performance reliability of its newly developed FD-230E low profile antenna since they are structurally different antennas. Astron filed its protest with our Office on February 14.

The protester essentially challenges the Army's evaluation of its technical proposal and argues that it should be considered a viable alternate source of the low profile antennas. Astron contends that since it submitted its prototype low profile FD-230E antenna to the Army under the belief that the Army would conduct full-scale performance evaluations of the product, the lack of Astron's own test data was meaningless and, thus, should not have been grounds for rejection of its proposal. Nonetheless, Astron asserts that it did submit substantial data to the Army.

Although most of this data admittedly concerned Astron's mast-mounted (FD-230A) antenna, the protester argues that the data should have been considered equally applicable to its low profile (FD-230E) antenna since the "laws of physics" and general principles of electricity allegedly support Astron's contentions that despite the much smaller size, less weight, and decreased power of the low profile model, the FD-230E shares the same essential mechanisms of the FD-230A antenna.

Because of the overriding mandate of the Competition in Contracting Act of 1984 (CICA) for "full and open competition" in government procurements obtained through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), this Office will closely scrutinize sole-source procurements

under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. Where, as here, however, the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for written justification for and higher-level approval of the contemplated sole-source action and publication of the required CBD notice, we will not object to the sole-source award unless it can be shown that there is not a reasonable basis for it. Id. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Data Transformation Corp., B-220581, Jan. 17, 1986, 86-1 CPD ¶ 55.

The Army explains that in accordance with the statutory preference, at 10 U.S.C. § 2325 (1988), for the procurement of NDI products, and the fact that no follow-on acquisition was anticipated to justify the expenditure of testing funds to determine product performance, the objective of the planned procurement was to provide the Army with a complete off-the-shelf low profile antenna supported by performance reliability documentation (e.g., test data or user reports). The NDI status of the procurement was aimed at insuring relatively quick delivery and immediate distribution for use in military field combat. The Army states that Astron was aware that the agency never intended to run full testing procedures to evaluate all aspects of Astron's product performance and, in fact, lacks the facilities to do so. Although very limited tests were conducted on Astron's FD-230E prototype, with predominantly acceptable results, the Army explains that the main reason it set out to examine Astron's prototype was to confirm the existence of an antenna which met the RFP's small size and low weight requirements and not to conduct full-scale performance testing. Due to its critical needs and the fact that full field testing could take a long period of time (beyond the stated delivery schedule), the Army contends that it properly held Astron responsible to demonstrate that its product was an acceptable alternative to the designated sole-source item and that Astron failed to do so. We agree.

Despite Astron's consistent claims that its low profile antenna equals or exceeds the performance capabilities of Eyring's antenna, we find that the record supports the reasonableness of the Army's determination that given the critical need and NDI status of this procurement, Astron failed to adequately demonstrate that its offered product

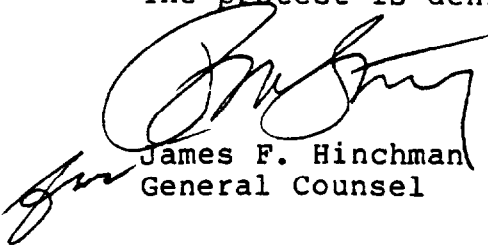
will perform reliably.^{1/} Under the terms of the solicitation and the J&A, an NDI antenna was specifically sought here to meet the Army's present operational need to protect the safety of its troops from detection by opposing combat forces through the use of a reliable low profile antenna. Consequently, we find reasonable the agency's rejection of Astron's proposal for lack of required technical data to support reliable performance in a military tactical environment. As to the quality of the data supplied by Astron, the record shows that Astron furnished no data to support system field performances while laying on the ground, or as to patterns and gains. Further, the data submitted regarding Astron's FD-230A antenna was, in our view, reasonably discounted by the agency mainly because of the structural differences in size, weight, and power, and because, as all parties agree, a ground antenna will not perform as well as a mast-mounted antenna. We also agree with the Army that Astron's FD-230A and FD-230E antennas will not necessarily have the same performance results since the extreme decrease in size, weight, and power (e.g., 45 pounds to 5 pounds and 1,000 watts to 200 watts) needed for the low profile antenna system leaves a reasonable question as to its actual performance, regardless of whether the performance method or mechanisms of the two antennas are similar.

Moreover, the Army cannot be held to be required to fully test a proposed alternate antenna on its own time and expense where, as here, it is apparent that such testing would extend beyond the solicitation's stated delivery schedule. See JTP Radiation, Inc., B-233579, Mar. 28, 1989, 89-1 CPD ¶ 315. Therefore, we cannot find that the agency acted unreasonably in failing to recognize Astron as another available source of the required product. Since Eyring remains the only known available source of a tested low profile antenna meeting the Army's current critical delivery requirements, and since this is a one-time acquisition that does not provide for the exercise of any options or follow-on contracts, we find the Army's proposed sole-source contract award to Eyring reasonable. Yet, we recognize that even the Army views Astron as a potential competitor for this requirement in the future, and we

^{1/} In its protest letter, Astron states that since at least three firms were considered available sources under a prior low profile antenna procurement, the present sole-source requirement is unjustified. Since the Army explains that the prior acquisition was for a different product than required here, we cannot agree on the present record that any other available sources exist here.

expect that if time permits, and if Astron's or any other firm's product is shown to comply, that any future requirements for these high frequency broadband low profile antennas will be acquired through a competitive procurement.2/

The protest is denied.



James F. Hinchman
General Counsel

2/ We also note that Astron raised two additional protest contentions, challenging the propriety of the Army's market survey and the CBD synopsis, for the first time in its comments to the Army's report in response to the protest. We find these protest bases untimely filed and not for our consideration. 4 C.F.R. § 21.2(a)(1) (1989).